

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1384 of 1987

WITH

CIVIL APPLICATIONS NOS.812 of 1987 & 465 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE R.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 & 2: Yes 3 to 5: No

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SHYAMSUNDER NARANPRASAD

CHAUDHARI

Versus

GENERAL MANAGER

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Appearance:

MR KG PANDIT for Petitioner

MR JD AJMERA for Respondent No. 1

RULE SERVED BY DS for Respondent No. 2, 3

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CORAM : MR.JUSTICE R.A.MEHTA

Date of decision: 13/04/98

ORAL JUDGEMENT

1. The petition is regarding disconnection of two telephones and the prayer is for restoration. It was admitted on 28.4.1987.

2. Thereafter, Civil Application No. 812 of 1987 was filed on 22.5.1987. Affidavit-in-reply was filed by the

department on 23.6.1987. Affidavit-in-rejoinder by the petitioner was filed on 26.6.1987. On that day i.e. on 26.6.1987, the Court had passed the following order:-

"Rule. Interim relief to the following extent:-

Taking into consideration the fact that the firm of the petitioner was having two telephone connections and that it is the say of the Department that two telephones are not disconnected, but they are taken in safe custody and it was learnt by the Department that the partnership firm was dissolved and no application for change or transfer as required by the rules was made, also the fact that without issuing any notice to the petitioner, the said telephones are disconnected and further that as per the Dissolution Deed dated 27th February 1987, the petitioner entitled to get assets of the firm as on 23rd February 1987, it is ordered that the respondent shall reconnect and return one telephone no. 465559 before 30th June 1987. Further, the petitioner is directed to fill in the necessary form with the Department within a week from today with the xerox copy of the Dissolution Deed and the Department would decide the said application within ten days from the date of receipt of the application. "

Thus, the telephone no. 465559 has been restored and reconnected.

3. The learned Counsel for the petitioner submits that the disconnection of each of the two telephones without any notice to the petitioner or to the firm is illegal, especially when there is no breach or default on the part of the petitioner. Secondly, it is submitted that the Telephone Department had acted on the application of the outgoing partner alone for shifting of one connection and when the petitioner received the bill for that telephone, the petitioner had complained to the Department by his letter dated 9.2.1987 (Annexure D) that his telephone was unauthorisedly disconnected and misused; he had specifically alleged that one Junior Engineer of the Telephone Department Kiritsinh Jadeja was behind the mischief and it was requested that the authority may inquire as to why the petitioner's telephone was disconnected from his premises and being used elsewhere. It was also mentioned that Kiritsinh Jadeja was working as a Junior Engineer in the Telephone Department at the National Chamber, Ashram Road. A reply was given on

16.4.1987 that the matter was under investigation. Kiritsinh is said to be related to the outgoing partner Jitendrasinh.

3. In the affidavit-in-reply in Civil Application, the department has contended that on 11.7.1987, on the application of one of the partners (the name is not mentioned), the telephone was shifted. It is further stated that on 20.2.1987, the partner Jitendrasinh alone had applied to the Telephone Department to put both the telephones of the petitioner in safe custody. Accordingly, the department had immediately put both the telephones in safe custody. The petitioner believing that his telephones have been disconnected has filed the petition. It is, thus, obvious that the department had shifted one telephone and put both the telephones in safe custody at the request of one of the partners only.

4. In the affidavit-in-reply in the same application, the department has contended that the petitioner can be granted reconnection only if he makes an application for transfer of the telephones signed by both the partners. This is rather curious. The department did not feel any such necessity while acting on the request of one of the partners for shifting telephone nor for putting both the telephones in safe custody again at the request of the single partner. It is obvious that if the department is right that signatures of both the partners are necessary for such action, the department could not have shifted the telephone from petitioner's premises and could not have put both the telephones in safe custody at the instance of one of the partners only. Thus, the action of the department of shifting telephone as well as of putting both the telephones in safe custody was wrong and illegal and requires to be undone.

5. In Civil Application No. 812 of 1987, affidavit-in-reply and rejoinder have been filed. The stand of the department is made very clear. In para 6 of the affidavit-in-reply, it is stated that the telephones can be restored if the petitioner is ready and willing to submit the form which is supplied to the advocate for the petitioner duly filled in, in accordance with the guidelines for filling up an application under Rule 430 of the Indian Telegraphs Rules, 1951 within reasonable time and it is insisted that the application form require that the outgoing partner or retiring partner shall sign the form in token of his consent and that he has actually retired. It is, thus, clear that the department has no objection to restoration of both the telephones to the

petitioner and the only condition is that the application form must be signed by both the partners.

6. After this affidavit-in-reply, a rejoinder was filed and the Retirement Deed was produced. Paras 4 to 6 of the Retirement Deed provide that the party of the second part (namely Jitendrasinh Sarvaiya) retires from the firm and party of the first part (i.e. the present petitioner S.N.Chowdhary) shall be entitled to carry on the business of the partnership either as the sole proprietor or in partnership with anybody in the same firm and in the same firm name. Clause 6 provides that the petitioner shall take over all the assets and liabilities of the firm and the outgoing partner shall not be liable for any act of the firm and that he shall have no interest in the assets and liabilities of the firm. Clause 9 provides that the outgoing partner undertakes to do all acts and things necessary to sign such papers whenever required for any legal matters etc.

7. The guidelines which have been reproduced in the affidavit-in-reply provide that the transfer of telephone may be permitted in the event of change of name and/or constitution of any company due to statutory obligation or otherwise. Clause (7) provides that in the case of dissolution of partnership firm, the transfer may be allowed to any one of the partners after an agreement is obtained from all the partners of the dissolved firm. It is, thus, clear that once there is an agreement between all the partners and signed by them, it is the only thing which is required by the Telephone Department. In the present case, Dissolution Deed signed by both the partners provide that all the assets and liabilities of the firm are taken over by the remaining partner and the outgoing partner is not entitled to any of the assets. The requirement of this clause is satisfied. The said Dissolution Deed is also produced with the affidavit.

8. After this Dissolution Deed was produced with the affidavit-in-reply, the Court had passed an order directing the petitioner to fill in the necessary form with the Department within a week, with a xerox copy of the Dissolution Deed and the Department was directed to decide the said application within 10 days from the date of receipt of the application.

9. The petitioner has made that application with a xerox copy of the Dissolution Deed. However, the department has not decided that application and it has filed another Civil Application No.465 of 1990 contending that the petitioner has failed to get the application

signed by both the partners and, therefore, the interim direction may be vacated. This stand of the department is absolutely illegal. The outgoing partner has signed the agreement of dissolution and the department is duty bound to act on it and restore both the telephones to the present petitioner. Signatures of all the partners on the application is not required in the facts and circumstances of the case. Therefore, this petition is required to be allowed and the respondents are required to be directed to restore both the telephones to the petitioner and transfer the same in the name of the petitioner.

10. In the result, the petition succeeds and the rule is made absolute by directing the respondents authorities to restore both the telephones to the petitioner. The restoration of telephones shall be within 15 days from the date of receipt of copy of this judgment. A simple copy of this judgment to be given to the learned Addl. Central Government Standing Counsel for communication to the respondents.

In view of the aforesaid directions, both the Civil Applications do not survive and are disposed of. Civil Application No. 465 of 1990 of the respondents is dismissed.

The respondent authorities to pay costs of the petitioner quantified at Rs. 1000/-. (Rs. One thousand only).

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mhs/-